



N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

Robert J. and Bernadette T. Slaney

Case No. 91-02835

Name of Respondents

Charles Schwartz
Prime Capital Services Inc.
Jeff Oliver
Michael P. Ryan

REPRESENTATION

Claimants Robert J. and Bernadette T. Slaney ("Claimants") appeared pro se.

Respondent Charles Schwartz ("Schwartz") appeared pro se.

Respondent Jeff A. Oliver ("Oliver") appeared pro se.

Respondent Michael P. Ryan ("Ryan") appeared pro se.

Respondent Prime Capital Services, Inc. ("Prime Capital") was represented by Michael P. Ryan, President of Prime Capital.

CASE INFORMATION

Statement of Claim filed: September 11, 1991.

Claimants' Amended Statement of Claim filed October 10, 1991.

Claimants Original Submission Agreement signed on: September 3, 1991.

Claimants subsequent Submission Agreement filed for the Amended Statement of Claim signed on: October 25, 1991.

Statement of Answer filed by Schwartz on: November 12, 1991.

Schwartz's Submission Agreement signed on: November 6, 1991.

Joint Statement of Answer filed by Respondents Prime Capital, Ryan and Oliver on: December 16, 1992.

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Respondents Prime Capital's, Ryan's and Oliver's Submission Agreements
signed on: December 13, 1991.

HEARING INFORMATION

Hearing Date/Session: April 21, 1992 - 1 session.

Hearing Location: NASD Office - New York City.

CASE SUMMARY

Claimants alleged that Respondent Schwartz transferred four accounts into another account without Claimants' authorization, knowledge and/or permission. Claimants further alleged that, due to this transfer, Claimants suffered financial losses. Claimants alleged that Respondent Prime Capital as Respondent Superior is liable for the wrongful conduct of its agents Oliver and Ryan. Claimants alleged that Respondents Oliver and Ryan failed to take prompt corrective action for Claimants accounts and that they made material misrepresentations to the Claimants. Claimants alleged that Oliver and Ryans' misrepresentations and delays in correcting Schwartz's wrong aggravated their losses.

Respondent Charles Schwartz maintained that after thorough discussions with Claimant Bernadette Slaney she authorized Schwartz to transfer the funds. Schwartz maintained that Claimants failed to promptly complain about the transfer, although they had received the confirmations slips several months earlier. Respondents Prime Capital, Ryan and Oliver maintained that based upon motive and relevant evidence, that Claimant Bernadette Slaney authorized the transactions before they were executed. Respondents Prime Capital, Ryan and Oliver maintained that Claimants failed to raise a timely objection to the transfers even though they had the knowledge and opportunity to voice their objections. Respondents maintained that Schwartz was neither an employee nor agent of Prime Capital, Ryan or Oliver and that in the event the Panel found liability against Schwartz, Respondents Prime Capital, Ryan and Oliver should not be held responsible for Schwartz's actions. Respondents Prime Capital, Ryan and Oliver further maintained that Schwartz initiated the transfers through Oppenheimer and not through Prime Capital. Respondents maintained that the Claimants are merely disgruntled investors who wish to make the Respondents guarantors of their own poor investment decision.

Respondents Ryan and Oliver denied Claimants allegation that they did not act promptly and maintained that they did promptly respond to Claimants' complaint and further denied liability for lost appreciation maintaining that the Claimants were given opportunities to transfer back into the original funds without a sales charge.

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RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$6,561.31 for loss between value on date of unauthorized transfer and repurchase of accounts and punitive damages, and attorneys fees in the amount of \$1,579.18.

Respondent Charles Schwartz requested that Claimants claim be denied in its entirety.

Respondents Prime Capital, Ryan and Oliver requested that all claims against them be dismissed in their entirety and that they be reimbursed for the \$1,712.50 in legal costs incurred by them in association with defending this claim.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Prime Capital is liable to the Claimants and shall pay to the Claimants the sum of **TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$2,500.00)**; inclusive of interest.
2. That Respondent Schwartz is liable to the Claimants and shall pay to the Claimants the sum of **TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$2,500.00)**; inclusive of interest.
3. Each party shall bear their own costs including attorneys fees.
4. All other claims, counter claims or cross claims are denied in their entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retained the Hearing Session Fee previously deposited by the Claimant.

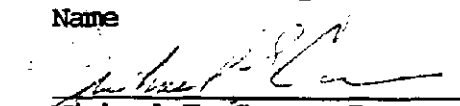
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Arbitrator's Signature

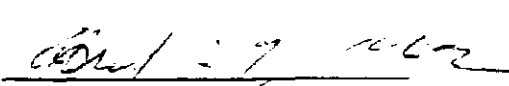
Name

Public/Industry


Michael E. Curan, Esq.

Public Arbitrator

Executed on:

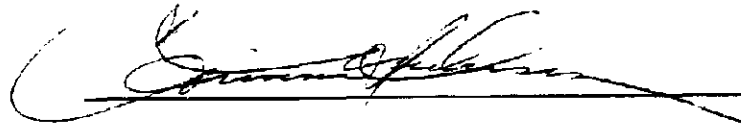
~~Date of Decision:~~ 

Date of Decision: May 12, 1992

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 29 day of April, 1992, before me personally appeared **Michael E. Curan, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



CORINNE L. ANDERSEN
Notary Public, State of New York
No. 32-4743718
Qualified in Suffolk County
Cert. Filed in Nassau County
~~Commission Expires 12/31/93~~

8/31/93